IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5547 of 1996

with

SPECIAL CIVIL APPLICATION No 2460 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ANIRUDDHSINH S JADEJA

Appearance:

1. Special Civil Application No. 5547 of 1996
   MR HD Dave, AGP for Petitioners No. 1-2
   MR BA VAISHNAV for Respondent No. 1
   Mr. AGP for Respondent No. 2
2. Special Civil Application No. 2460 of 1998
   MR HM PRACHCHHAK for Petitioner No. 1
   Mr. H.D. Dave, AGP for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/03/2002

ORAL JUDGEMENT

Heard the learned advocates for the parties. Awards passed in Reference No. 937 of 1990 (Old Reference No. 912 of 1987) by the labour court, Junagadh dated 18th September, 1995 is under challenge in these two petitions wherein the labour court concerned has granted reinstatement with 25% of the back wages for the intervening period. Mr. Dave, learned AGP appearing for the State of Gujarat has submitted that there was no findings on record that the respondent has worked for 240 days continuously. Not only that but in cross examination of the respondent workman, when a specific question was asked to him as to whether he is having any evidence with him to show that he has completed 240 days' continuous service, then, the answer given by the workman was to the effect that he has completed 240 days within one year. However, the petitioner has filed written statement at Exh. 10 and thereafter, the petitioner has also cross examined the respondent and thereafter list has been produced vide Exh. 38 by the petitioner but thereafter, the petitioner has not remained present before the labour court and, therefore, the labour court concerned, relying upon the evidence of the respondent workman that he has completed 240 days and on the basis of the assertion that no notice or notice pay in lieu thereof or retrenchment compensation has been paid to him at the time of termination of his service, granted reinstatement with 25% back wages for the intervening period and has ignored the defence of the petitioner that the respondent has left the service at his own. He has, therefore, submitted that the labour court has erred in not believing that the respondent has left the job at his own.Learned AGP Mr. Dave has further submitted that in view of the order passed by this court on 21st March, 1998 in Civil Application No. 2660 of 1998 in Special Civil Application No. 5547 of 1996 the petitioner in special civil application no. 5547 of 1996 has been directed to reinstate the workman as per the labour court's award and has been further directed to pay last drawn wages from the date of the affidavit i.e. 6th November, 1996. He has submitted that by said order, the petitioner State of Gujarat has also been directed to reinstate the workman on or before 1.4.1998 and to pay wages regularly thereafter till the final disposal of the petition. Wages from 6th November, 1996 till his reinstatement i.1.1.4.1998 was directed to be paid within four weeks from that day. In view of the said order

passed in the aforesaid civil application, learned advocate Mr. Vaishnav has submitted that the respondent workman has already been reinstated in service and at present, he is working.

I have considered these facts. I have perused the award in question. Considering these facts, according to my opinion, there was no positive evidence before the labour court that the respondent has completed 240 days' continuous service within one year. Inspite of that, in absence of any corroborating evidence, the labour court has believed the deposition of the respondent workman and has on that basis granted reinstatement with continuity of service, with 25 per cent of the back wages for the intervening period. However, now, the workman has already been reinstated in service as per the orders passed by this court in aforesaid civil application on 21.3.1998 and, therefore, now it would not be just and proper to disturb the position of the respondent. However, according to my view, the labour court has committed error in granting 25% back wages to the respondent workman and that part of the award is required to be quashed and set aside while maintaining the rest of the award made by the labour court for reinstatement with continuity of service.

In view of the above, special civil application no. 5447 of 1996 is partly allowed. The award made by the labour court concerned in Reference (LCJ) No. 937 of 1990 is hereby quashed and set aside in so far as it relates to grant of 25 per cent of the back wages for the intervening period. It is clarified that the award of reinstatement with continuity of service has not been disturbed by this Court and has been confirmed by this Court. Rule is made absolute in terms indicated hereinabove with no order as to costs.

In view of the aforesaid order passed by this court in special civil application no. 5547 of 1996, special civil application no. 2460 of 1998 filed by the workman shall not survive. Same is therefore dismissed. Rule is discharged. There shall be no order as to costs.

Dt.6.3.2002. (H.K. Rathod,J.)

Vyas